

Emergency Bill No. 42-01  
Concerning: Air Quality Control -  
Revision  
Revised: Apr. 2, 2002 Draft No. 6  
Introduced: December 4, 2001  
Enacted: April 2, 2002  
Executive: April 11, 2002  
Effective: April 11, 2002  
Sunset Date: None  
Ch. 6, Laws of Mont. Co. 2002

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Subin, Silverman, Praisner, Leggett, Dacek,  
and Denis, and at the request of the County Executive.

### **AN EMERGENCY ACT** to:

- (1) authorize the Department of Environmental Protection to protect ambient (outdoor) air quality and the indoor air quality in residential and non-residential properties;
- (2) repeal or modify certain air quality requirements to conform with State law and modern air quality control practices;
- (3) facilitate enforcement of County air quality control laws;
- (4) repeal the authority of the Board of Appeals to consider an appeal of an air quality control violation and allow direct appeal of certain agency decisions to a court; and
- (5) generally amend County law regarding air quality control.

By amending

Montgomery County Code  
Chapter 2, Administration  
Section 2-112

Chapter 3, Air Quality Control

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Section 2-112, as amended by Chapter 30 of the Laws of  
Montgomery County 2001, and Chapter 3 are amended as follows:**

**2-112. Jurisdiction.**

\* \* \*

(c) The Board has the following appellate jurisdiction:

The board must hear and decide each appeal taken under:	Those appeals involve:
* * *	* * *
[[Section 3-16]]	[[Air quality control]]
* * *	* * *

\* \* \*

**Chapter 3.**

**AIR QUALITY CONTROL.**

**3-1. Purpose of Chapter.**

(a) It is [hereby declared to be] the policy of the County to protect the  
County 's ambient air [resources of the county to the degree] quality as  
necessary [for the] to:

- (1) [Protection of] protect the [public] health, safety, comfort and  
well-being of [its citizens] the County's residents and businesses;
  - (2) [Prevention of] prevent injury to plant and animal life and to  
property; and
  - (3) [Protection of] protect the [comfort and convenience of the  
public and the protection of the] recreational resources of the  
[c]County.
- (b) [In determining the ways and means to be required for reducing  
pollutant concentrations, matters of economics and private interests and

other factors shall be subordinate considerations, in general, to the necessity of achieving the standards for the protection of the public health.] It is the County's goal to protect and facilitate the improvement of the indoor air quality experienced by businesses and occupants of multi-tenant buildings.

(c) The Department must apply principles of sound environmental health management and use reasonably available air quality control technology to implement this Chapter.

### 3-2. Definitions.

[For the purposes of] In this [c]Chapter, the following words and phrases [shall] have the following meanings [respectively ascribed to them by this section]:

**Air pollutant:** Any substance [the emission of which] whose release into the atmosphere causes air pollution. [It] An air pollutant may be in the form of a smoke, gas, dust, **odor, particulate matter** or combinations of [these] smoke, gas, dust, odor, or particulate matter[, but is not limited to this enumeration].

**Air pollution:** The presence in the [outdoor] atmosphere of [one or more] any substances or combinations [thereof] of substances [such] whose character, [in such] quantities [and of such] or duration [as are or may tend] make those substances likely to [be injurious] pose a health hazard to humans, plants, or animals [life, or property], or [which] unreasonably interfere[s] with the [comfortable] use and enjoyment of [life or] property[, or with the conduct of business,]. The substances may be emitted as odors, solids, vapors, liquids, or gases from any single source or in combination with other sources.

**Air pollution episode:** A[n] recognized occurrence designated [recognized by a determination] by the [g]Governor of Maryland or the [s]Secretary of the state [department of health and mental hygiene] Department of the Environment [that the]

as an accumulation of ambient air pollutants [may attain, is attaining or has attained a level or] at levels [considered injurious] harmful to human health.

**Control equipment:** Any [equipment which has the function of controlling the emissions from any process, fuel-burning or refuse-burning equipment and thus reduces the creation of or the emission of or the emission of air pollutants into the atmosphere or both] device or equipment that prevents or reduces emissions.

**Department:** The [d]Department of [e]Environmental [p]Protection.

**Director:** The Director of the **Department** [of Environmental Protection] or [his designated agent] the Director's designee.

**Emission:** Any substance, other than water in an uncombined form, discharged [directly or indirectly] into the atmosphere, including [but not limited to] **odors, particulate matter**, vapors, [or] gases, or any combination [thereof and odors associated with them by means of stationary sources, equipment, materials handling, construction and other acts or processes] of these substances.

**Excessive lodging:** A condition of farmland where embedding of the previous crop causes the normal use of harvesting, tillage, or planting equipment to be impossible or impracticable.

**[Fuel-burning equipment:** Any equipment, device or contrivance and all appurtenances thereto, including ducts, breeching, fuel-feeding equipment, ash removal equipment, combustion controls, stacks and chimneys, used in the process of burning fuel or other combustible materials for the primary purpose of producing heat or power by indirect heat transfer.]

**Incinerator:** Any equipment [,] or device [or contrivance] used [for the destruction of] to destroy garbage, rubbish or other wastes by burning [and all appurtenances thereof].

**[Indirect sources of pollution:** The category of sources of pollution, also described under state and federal laws and regulations as "complex sources," which

includes any facility, building, structure, highway, institution or combination thereof, the construction, modification or use of which results or may result in the emission from mobile source activities associated with it of air pollutants for which there is a national standard.]

**Indoor air pollutant:** Any substance whose indoor presence causes **indoor air pollution**. An **indoor air pollutant** may consist of particles such as dust, fibers, asbestos, or radon progeny[[, or animal dander]]; gases such as formaldehyde, carbon monoxide, mists, or bioaerosols; biological substances such as viruses, bacteria, fungi or molds; or combination of substances.

**Indoor air pollution:** The indoor presence of any airborne substance, such as particles, fumes, mists, gases, or vapors or combination of substances likely to pose a health hazard to humans, plants, or animals or unreasonably interfere with the use and enjoyment of residential or non-residential property, including the ordinary conduct of business.

**Installation:** Any article, machine, or equipment[, or other contrivance], including [but not limited to] **emission control equipment**, processing equipment, manufacturing equipment, fuel burning equipment, incinerators or any equipment or construction capable of generating, causing or reducing **emissions**.

**[Nuisance:** Environmental condition, intermittent or continuous, produced or correctable by human agency, prejudicial to reasonable enjoyment of health, comfort or safety of any individual or causing injury to damage to persons, property or the conduct of business.]

**Odor:** The property of an **emission** that stimulates a **person's** sense of smell.

**Official fire:** A fire authorized by a government officer for the purposes listed in this Chapter.

**Opacity:** [The state of a substance which renders it partially or wholly impervious to rays of light so that the substance partially or wholly obscures an

observer's view.] The degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

**Open fire:** A fire in which any material is burned in the open or in a receptacle other than a furnace, incinerator or other equipment [connected to a stack, which equipment is constructed in accordance with and meets the] not in conformance with the design requirements of the applicable building code of the [c]County [and] or the air quality control regulations of the [s]State.

**Particulate matter:** Material other than water in uncombined form which is or has been airborne and exists as a liquid or solid at standard conditions of temperature [70°F] 25 degrees Celsius (77 degrees Fahrenheit) and pressure of [(] 29.92 inches (760 mm) [Hg)] mercury.

**Permit:** An air pollution control permit issued by the **Department** or the [state department of health and mental hygiene] Maryland Department of the Environment covering open burning, [and certain] **installation** [and equipment and other sources which may cause emissions ], or operation of equipment with the potential to emit air pollution.

**Person:** An[y] individual, group of individuals, partnership, firm, voluntary association, public or private corporation, or an [association, governmental] agency [or any other legal entity], or department of the County or of any federal, state, or municipal government to the extent allowed under federal, state, or municipal law.

**Plan for compliance:** A schedule of actions designed to achieve compliance with this [c]Chapter after a specified period of time submitted by a violator and approved by the [d]**Director**.

**[Ringlemann chart:** A chart for grading the appearance, density or shade of smoke as published with instructions for use by the United States Bureau of Mines, in Information Circular 7718, dated August 1955. Any other method for grading

smoke which is approved by the state department of health and mental hygiene as the equivalent of the Ringlemann Chart may be substituted therefor.]

**[Smoke:** Small gas-borne particles, other than water, in sufficient number to be observable by sight.]

**Source:** [Any physical arrangement or structure which may emit or cause to be emitted air pollutants. It includes, but is not limited to, stacks, chimneys, building openings, open fires, vehicles, processes, equipment, structures and premises.] A person or property that is contributing to air pollution.

**Unconfined source:** An installation that causes emissions that are not enclosed in a stack, duct, hood, flue, or other conduit, but that escape into the atmosphere through openings such as windows, vents, or doors, ill fitting closures, or poorly maintained equipment.

### **3-3. Administration.**

[It shall be the duty of the director of the department of environmental protection to:]

[(a) Supervise the execution of all laws, rules and regulations pertaining to air pollution as provided in this chapter;]

[(b) Conduct studies, investigations and research relating to air pollution and its prevention, abatement and control;]

[(c) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings;]

[(d) Make inspections and tests of existing and newly installed equipment subject to this chapter to determine whether such equipment complies with the standards set forth in the regulations adopted pursuant to this Code;]

- 155 [(e) Investigate complaints of violations of the provisions of this chapter,
- 156 make inspections and observations of air pollution conditions and
- 157 maintain records of all such investigations, complaints, inspections and
- 158 observations;]
- 159 [(f) Approve or reject applications for permits, plans of compliance and
- 160 other documents required under provisions of this Code;]
- 161 [(g) Secure necessary scientific, technical, administrative and operational
- 162 services, including laboratory facilities, by contract or otherwise;]
- 163 [(h) Prepare and develop a comprehensive plan or plans in the county for the
- 164 prevention, abatement and control of air pollution;]
- 165 [(i) Advise, consult and cooperate with other local governmental units,
- 166 agencies of the state, industries, interstate or interlocal agencies and the
- 167 federal government and with interested persons and groups;]
- 168 [(j) Collect and disseminate information and conduct educational and
- 169 training programs relating to air pollution;]
- 170 [(k) Encourage voluntary cooperation by persons or affected groups to
- 171 achieve the purpose of this chapter;]
- 172 [(l) Receive and administer grants or other funds or gifts from public and
- 173 private agencies, including the state and federal governments, for the
- 174 purpose of carrying out any of the functions of this chapter;]
- 175 [(m) Do any and all acts which may be necessary for the successful
- 176 prosecution of the policy of this chapter and such other acts as may be
- 177 specifically enumerated herein;]
- 178 [(n) Promulgate rules and regulations subject to provisions in section 3-4
- 179 under which this law will be administered.]
- 180 (a) The **Director** must enforce this Chapter. The **Director** must advise,
- 181 consult, and cooperate with other local government units, State



agencies, interstate agencies, the federal government, private industries and businesses, homeowners associations, and other interested **persons** about air quality problems that affect human health.

(b) This Chapter does not waive any requirement of State or federal law.

### **3-4. Regulations.**

[(a)] The [c]**County** [e]**Executive** may adopt regulations under method (2) [of section 2A-15 of this Code, for] to implement this [c]**Chapter**. [Such] [r]**Regulations** [shall] adopted under this Chapter must not conflict with, [nor] waive any provisions of [this Code nor], or be less restrictive than [regulations currently established and in effect as] any requirement[s] [of the state department of health and mental hygiene] of State or federal law.

[(b)] Regulations adopted pursuant to provisions of this section shall provide for but not be limited to the following:

- (1) Control of particulate matter emissions from fuel burning installations, grain drying installations, materials handling and construction and other acts and installations;
- (2) Control of gas, vapor, odor and volatile organic compound emissions from fuel burning and other installations;
- (3) Prohibition of certain incinerators and new fuel-burning installations;
- (4) Application fees at a rate not to exceed the cost of administering the program.]

[(c)] Notwithstanding any other provisions of this section, the county executive may adopt regulations, under method (2) of section 2A-15 of this Code, regarding procedures for the issuance of permits for indirect sources of pollution in accordance with applicable state and federal regulations.]

209 **3-5. [Visible] Ambient air quality requirements for visible emissions.**

210 (a) **Generally.** [No person shall] A person must not cause [, suffer, allow]  
 211 or [permit] allow the discharge of any visible emission[s] from any  
 212 **installation** or building, other than water in an uncombined form, into  
 213 the atmosphere [which are visible to human observers].

214 (b) **Exceptions.**[(1)]Subsection (a) [shall] does not apply to any: [emissions  
 215 during the building of a new fire, cleaning of fires, soot blowing, start-  
 216 up, any process modification or adjustment or occasional cleaning of  
 217 control equipment, the shade or appearance of which is not darker than  
 218 No. 1 on the Ringelmann Smoke Chart or of such opacity as to obscure  
 219 an observer's view to a degree not greater than does smoke designated  
 220 as No. 1 on the Ringelmann Smoke Chart, for a period or periods  
 221 aggregating no more than four (4) minutes in any sixty (60) minutes.]

222 [(2) Subsection (a) shall not apply to emissions of the following:

223 a. From those incinerators that are to be phased out under  
 224 provisions of this chapter;]

225 (1) **Emission during start-up and process modifications or**  
 226 **adjustments, or occasional cleaning of control equipment, that is**  
 227 **not greater than 40 percent opacity for a period of not more than**  
 228 **6 consecutive minutes in any 60-minute period.**

229 (2) **Emission from a food preparation installation, such as a char-**  
 230 **broiler or pit barbecue, that operates at one location less than 15**  
 231 **days in any 365-day period, or that is not greater than 10 percent**  
 232 **opacity.**

233 (3) [b. From the burning of wood in fireplaces or used as residential]  
 234 **Emission caused by wood burning in a residential fireplace or**

wood stove, or **emission** for recreational purposes such as a  
campfire.

- (4) [c.] **Emission** [F]from an open fire[s] (except a salamander[s])  
[permitted under provisions of] that complies with this  
[c]Chapter.

**[3-6. Control and prohibition of open fires.]**

[(a) **Official fires.** Open fires may be set with due notice to, but without  
prior approval from the department in performance of an official duty of  
any public officer if the fire is necessary for one or more of the  
following reasons or purposes:

(1) For the prevention of a fire hazard which cannot be abated by  
other means.

(2) Except during the existence of an air pollution episode, for the  
instruction of public fire fighters or industrial employees under  
supervision of the director, department of fire and rescue  
services.

(3) For the protection of the public health, safety or welfare.]

[(b) **Open fires.** Except during the existence of an air pollution episode, the  
following open fires are allowed within the county without prior  
approval from the department; provided, that they otherwise conform  
with other fire control laws and regulations; and provided, that no  
nuisance is created:

(1) **Leaves.** In those areas where no provision is made for public  
collection of leaves, the open burning of leaves originating on the  
premises by householders is permitted.

(2) **Household Trash.** In those areas where no provision is made for  
public collection of refuse, burning of ordinary household trash

(Incinerator Institute of America waste types 0 and 1 only)

originating on the premises, excluding commercial

establishments, by householders is permitted; provided, that:

a. The fires are located no closer than three hundred (300) feet from any neighboring habitable dwelling or place where people work or congregate;

b. Materials are not burned which create dense smoke (emissions of an opacity or darkness greater than No. 1 on the Ringelmann Smoke Chart.)

(3) **Cooking.** Fires may be used for the cooking of food; provided, that visible emissions are not greater than No. 1 on the Ringelmann Smoke Chart and no nuisance is created.

(4) **Salamanders.** Salamanders or other devices fired with propane gas or No. 2 fuel oil may be used for heating by construction or other workers; provided, that no visible emissions are created.

(5) **Agricultural Operations.** Fires may be set in the course of agricultural operations; provided, that visible emissions are not greater than No. 1 on the Ringelmann Smoke Chart and no nuisance is created and prior notice is given to the department.

(6) **Recreational Purposes.** Open fires may be set for recreational purposes such as campfires; provided, that visible emissions are not greater than No. 1 on the Ringelmann Smoke Chart and no nuisance is created.

(7) **Explosive Containers.** Empty boxes and fiber packing materials which have previously contained high explosives may be burned at an isolated location more than one hundred (100) feet from any occupied building or structure or public street or road and no

person shall be closer than one hundred (100) feet of the fire once  
burning has begun.]

[(c) **Outside of buildings.** Except as provided by paragraphs (a) and (b) of  
this section, no person shall in the county burn any refuse or plant life,  
in any public or private place outside of any building unless he shall  
have first obtained a permit from the department for such activity. The  
duration of such permits shall be established by the director. The  
department shall issue such permits only when:

- (1) There is no practical alternate method to dispose of the material  
to be burned or to conduct the desired activity.
- (2) No hazardous condition or nuisance will be created.
- (3) No burning will be done within five hundred (500) yards of one  
(1) or more occupied buildings or a heavily traveled public  
roadway.
- (4) Fire control laws or regulations of other governmental agencies  
will not be violated.
- (5) No materials which provide smoke, in excess of No. 1 on the  
Ringelmann Smoke Chart, when burned, including but not  
limited to tires and roofing material, will be burned.
- (6) Such other conditions as the director may impose to minimize  
creation of smoke, to prevent nuisances and air pollution and to  
protect the health, safety, comfort and property of any persons  
shall be satisfied.
- (7) The material to be burned shall be waste matter of the premises  
on which it is to be burned.
- (8) Methods of disposal by burning acceptable to the director may be  
approved for use when distance limitations cannot be met.]

316 [(d) **Extinguishing fires in violation.** Fires started in violation of this  
 317 section shall be promptly extinguished by the person responsible for the  
 318 same upon notice by a duly authorized agent of the department. This  
 319 shall not be considered an exclusive remedy.]

320 **3-6. Ambient air quality requirements for particulate matter from**  
 321 **unconfined sources.**

322 A person must not cause or allow emissions from an unconfined source without  
 323 taking reasonable precautions to prevent particulate matter from becoming airborne.  
 324 When the Director orders, these precautions must include installing and using hoods,  
 325 fans, and dust collectors to enclose, capture, and vent emissions.

326 **[3-7. Permits for certain equipment.]**

327 [(a) **Required generally.** Subject to provisions found in section 3-9 of this  
 328 chapter, it shall be unlawful within the county for any person to either  
 329 build, erect, alter, replace, store, operate, sell, rent or use any source,  
 330 article, machines, equipment, substance or other contrivance which is  
 331 the subject of regulations promulgated in accordance with section 3-4(a)  
 332 of this chapter or by the Maryland State Department of Health and  
 333 Mental Hygiene, the use of which may directly or indirectly cause  
 334 emissions into the air, without having first obtained the appropriate  
 335 Montgomery County air pollution control permit to do so. This  
 336 requirement shall be deemed satisfied when any one of the following is  
 337 in effect:

- 338 (1) A currently valid permit to construct or operate has been issued  
 339 by the state department of health and mental hygiene for the  
 340 subject installation or equipment.

(2) A currently valid conditional permit has been issued by the state department of health and mental hygiene for the subject installation or equipment.]

[(b) **Exemptions.** No permit shall be required for installation of equipment specifically exempted under regulations issued by the state department of health and mental hygiene for the subject installation or equipment.]

[(c) **Compliance with regulations.** The mere existence of a valid permit does not relieve a person of his duty to comply with any conditions contained in such permit and other county, state and federal air pollution control or fire control regulations.]

[(d) **Change of ownership.** A change of ownership shall terminate all permits issued for a particular installation or equipment. The new owner shall make application for the appropriate permit within thirty (30) days of the change of ownership.]

**3-7. Ambient air quality requirements for particulate matter from materials handling and construction**

(a) A person must not cause or allow any material to be handled, transported, or stored, or any building or road to be constructed, altered, repaired, or demolished, without taking reasonable precautions to prevent **particulate matter** from becoming airborne.

(b) Unless the **Director** finds otherwise in a particular situation, reasonable precautions include:

(1) using water or chemicals to control dust when demolishing a building or structure, undertaking construction operations, grading a road, or clearing land;

(2) applying asphalt, water, or suitable chemicals on a dirt road, materials stockpile, or other surface that can create airborne dust;

- (3) installing and using hoods, fans, and dust collectors to enclose and vent the handling of dusty materials, and employing reasonable containment methods to prevent the release of **particulate matter** during sandblasting or similar operations;
- (4) covering each open-bodied vehicle used to transport any material likely to create **air pollution** at all times when the vehicle is moving;
- (5) paving a roadway and maintaining it in clean condition; and
- (6) promptly removing earth or other dust-producing material from a paved street to which the material was transported by truck, earth moving equipment, or water erosion.

**[3-8. Applications for permits.]**

[(a) **Generally.** Applications for the air pollution control permits described in section 3-7 shall be made to the department on forms provided by the department. The department shall require such information and details regarding the installation as it considers necessary to determine whether the installation to operate is in compliance with county, state and federal air pollution control regulations and that the installation incorporates advances in the technology of air pollution control developed for the kind and amount of emissions of the applicant's installation.]

[(b) **Denial of application.** Whenever it shall appear to the department that the operation or construction of an installation for which a permit is applied will result in a violation of any county, state or federal air pollution control regulations or contravention of applicable ambient air quality standards, an order shall be entered denying the permit and setting forth the reasons thereof. The department shall not accept a further application unless the applicant has complied with the objections specified by the department as its reasons for denial of the permit or



submitted satisfactory evidence demonstrating that a particular requirement cannot be met immediately and submitted to the department an acceptable plan of compliance.]

**3-8. Control or prohibition of open fires.**

(a) **Official fires.** A public officer may set an **open fire** with due notice to, but without prior approval from, the **Director** if the public officer is performing an official duty and the fire is necessary to:

- (1) prevent a fire hazard which cannot be abated by other means;
- (2) instruct public fire fighters or industrial employees under supervision of the Fire Administrator if the instruction does not occur during an **air pollution episode** and the fires do not contain asphaltic or asbestos materials; or
- (3) protect the public health, safety or welfare.

(b) **Open fires.** Except during an **air pollution episode**, the following **open fires** are allowed without prior approval of the **Director** if the fire does not otherwise violate any other law or regulation:

- (1) **Cooking.** A **person** may use a fire to cook food if the **person** uses an outdoor cooking apparatus approved for use by a nationally recognized standards organization, such as Underwriters Laboratory, and the **person** does not create a nuisance.
- (2) **Salamanders.** Construction workers and other outdoor workers may use a salamander or other device fired with propane gas or No. 2 fuel oil for heating if the device does not create visible **emissions.**
- (3) **Recreational purposes.** A **person** may set an **open fire**, such as a campfire, for recreational purposes if the fire does not produce

visible **emissions** that exceed 20 percent **opacity** for a total of more than 3 minutes in any 60-minute period and is not larger than 3 feet in diameter.

(c) **Permitted fires.** Except as provided in subsections (a) and (b), a **person** must not burn any refuse or plant life outside of a building unless the **person** has obtained a **permit** from the **Director**. The **Director** must limit the duration of the **permit**. The **Director** may issue the **permit** for any of the following reasons or purposes:

- (1) **Agricultural open burning.** A **person** may set a fire during agricultural operations if the fire complies with subsection (d) and the **person** obtains an agricultural burning **permit** before setting the fire. The **Department** may grant a **permit** to burn **excessive lodging** or destroy diseased crops and other vegetation originating on the applicant's property only:
  - (A) on a property that is agriculturally assessed for property tax purposes; and
  - (B) if the burning is necessary to maintain agricultural land in production.
- (2) **Ceremonial burning.** A **person** may set fires for a ceremonial purpose.
- (3) **Disaster rubbish.** A **person** may burn rubbish, including landscape waste, during a community disaster if the County Executive has officially declared a state of emergency.
- (4) **No alternative.** A **person** may burn any material if the **Director** finds that there is no practical alternative way to dispose of or store the material more safely.

(d) **Conditions.** The **Director** may impose any condition on an open burning permit to prevent **air pollution** or protect the health, safety, comfort and property of **persons**. An **open fire** must at all times be attended by the permittee or the permittee's agent who has the burning **permit** in possession during the burning. The **Director** must not grant a **permit** if the intended activity would:

- (1) create a hazardous condition;
- (2) be conducted during an **air pollution episode** or other burning prohibition period declared by the Governor or the Secretary of the Maryland Department of the Environment;
- (3) be conducted within 500 yards of an occupied building or a heavily traveled public road, walkway, path, or other facility used by the public;
- (4) violate any other law or regulation;
- (5) create visible **emissions** whose **opacity** exceeds 20 percent for more than a total of 3 minutes in any consecutive 60-minute period; or
- (6) include the burning of leaves, brush, other vegetation, or household trash.

(e) **Permit denial.** The **Director** may deny a request for an open burning **permit** if:

- (1) the applicant has not shown that the applicant can comply with this Chapter and any applicable State or federal **air pollution** control law; or
- (2) the **Director** finds, based on the applicant's history, that the applicant is not likely to comply with all applicable **County**, **State**, and federal **air pollution** control laws.

(f) **Permit revocation or suspension.** The **Director** may revoke, suspend, or modify a **permit** granted under this Section if the **Director** finds that the permittee has violated any term or condition of the **permit**. Notice of any proposed revocation, suspension, or modification must be in writing, include the reason for the decision, and give the permittee an opportunity for a hearing. A request for a hearing does not stay the **Director's** action.

(g) **Extinguishing fires in violation.** A **person** responsible for starting a fire that violates this Section must promptly extinguish the fire after receiving notice from the **Department**. The notice to extinguish the fire is not an exclusive remedy.

**[3-9. Plan of compliance.]**

[When an applicant has adequately demonstrated to the department that compliance with this chapter and regulations adopted thereto cannot be effectively and immediately made, the director shall have authority to grant permits for the installation or operation of noncomplying equipment, but only in the event that all necessary steps have been taken to secure compliance with this chapter. Such steps shall include the requirement that the applicant file with the department a plan of compliance which shall include a schedule of actions approved by the director for the control of emissions. Permission for noncompliance shall be granted for a period of no longer than two (2) years, during which time the applicant shall file periodic progress reports as specified by the department. At the end of the period granted, the applicant shall be deemed in violation of this chapter, unless this period is further extended by the board of appeals upon proper showing of an attempt to comply and its approval of a plan of compliance.]

**3-9. Ambient air quality requirements for odors.**

(a) A person must not cause or allow the emission into the atmosphere of any gas, vapor, or particulate matter beyond the person's property line or unit if a resulting odor creates air pollution.

(b) The Director may issue a citation for violating subsection (a) if the Director:

(1) witnesses the violation; or

(2) receives complaints from at least 2 individuals who have personal knowledge of the air pollution odor.

**[3-10. Abatement orders.]**

[(a) Upon finding that a person is violating a provision of this chapter, the director or an authorized fire official may, at his discretion, issue an order directing such person to cease such violation. Such order shall be in writing and shall be served upon the person to whom it is directed, either by mail or by personal delivery. If such person cannot be located within the county after reasonable effort, service shall be made by certified mail at his last known address or by posting the order upon the premises. Nothing in this section shall be construed to prohibit the director or the fire marshal from dispensing with the provisions of this section and proceeding directly under sections 3-11 and 3-17 of this Code.]

[(b) When the director determines, either upon his own investigation or upon petition of those affected, that a nuisance as defined by this chapter exists and effects at least thirty (30) percent of a sample of people exposed to it in their usual places of occupancy, the sample size to be at least twenty (20) people or seventy-five (75) percent of those exposed if fewer than twenty (20) people are exposed, he shall immediately issue

an abatement order to the person responsible for the condition in accordance with subsection (a) herein.]

**3-10. Control and prohibition of indoor air pollution.**

(a) A person must not cause or allow the emission of indoor air pollutants beyond the person's property line in a manner that creates indoor air pollution

(b) Subsection (a) does not apply to:

(1) the residential use of personal hygiene products;

(2) smoking in [[non-restricted areas]] a private home; or

(3) residential cooking odors.

(c) In this Section, "property line" means the boundary of a residential or non-residential area that a person legally uses or owns. For a property divided into more than one legal unit, such as multi-family housing or a multi-tenant commercial property, "property line" also includes any boundary between a unit and a common area or between units.

(d) The Director may issue a citation for violating this Section if the Director:

(1) witnesses the violation; or

(2) receives complaints from at least 2 individuals who have personal knowledge of the indoor air pollution.

**[3-11. Revocation of permit.]**

[The department shall issue an order suspending or revoking any permit for violations of this chapter and regulations adopted pursuant thereto, state or any federal air pollution control laws or regulations, state or county fire control laws or an approved plan of compliance. The department shall revoke any permit for violations or for any false statement in the application or because of conditions revealed by such application or any report, record or inspection or any other means which would

warrant refusal of a permit on any original application. An order suspending or revoking a permit shall be served in person or by certified mail upon the permit holder and shall be final unless the holder appeals such order as provided in section 3-16.]

**3-11. Determining compliance.**

(a) **Compliance methods.** The **Director** may conduct testing or require a property owner to conduct testing to determine compliance with this Chapter in response to a complaint.

(b) **Manner of testing.** A property owner must conduct all tests in a manner, and before the deadline, set by the **Director** and submit a detailed report of all test results to the **Director** within 15 days after the testing is complete unless the **Director** grants an extension. Each test must be performed by a **person** qualified to conduct the test, as determined by the **Director**.

**3-12. Testing and monitoring.**

[(a) **Methods.** Emission tests shall be conducted in accordance with recognized standards and methods of measurement. Methods found in the American Society of Mechanical Engineering (ASME) Power Test Code 27-1957, American Society for Testing Materials (ASTM) D2928-70 and the specifications of the U.S. Environmental Protection Agency shall be used, but these may be modified or adjusted by the department to suit specific sampling conditions or needs based upon good practice, judgment and experience. Measurements taken in stacks at point beyond the installed control equipment shall be deemed to be a measurement of emission.]

[(b) **Manner.** The department is hereby authorized to conduct or cause to be conducted any test or tests to determine compliance with this chapter or

581 regulations adopted thereto. All tests shall be conducted in a manner  
582 determined by the director and a complete, detailed test report of such  
583 test or tests shall be submitted to him in timely fashion. When tests are  
584 taken by the owner or the owner's independent testers, the director shall  
585 require that such tests be conducted by reputable, qualified personnel, as  
586 determined by the director or representatives of the department.]

587 [(c) **Facilities and access.** It shall be the responsibility of the owner or  
588 operator of the equipment tested to provide, at the owner's expense,  
589 utilities, facilities and reasonable and necessary openings in the system  
590 or stack and safe and easy access thereto, to permit samples and  
591 measurements to be taken. All new sources of air pollutants created  
592 after the effective date of this law may be required by the director to  
593 provide utilities, facilities and adequate openings in the system or stack,  
594 and safe and easy access thereto, to permit measurements and samples  
595 to be taken.]

596 [(d) **Cost.** If emission tests conducted as the result of the action of the  
597 director substantiate that a violation exists, the person or persons  
598 responsible for the violation shall be responsible for paying all attendant  
599 costs for conducting such tests. If such tests do not show that a  
600 violation exists, then the county shall be responsible for paying all costs  
601 for conducting such tests. In no event shall the county assume costs of  
602 providing facilities, utilities and access for such testing. The cost of  
603 emission tests required by the director on newly installed equipment for  
604 the issuance of the initial permit to install and operate shall be the  
605 owner's regardless of the results. When the person responsible elects to  
606 conduct his own tests, then the person so electing shall pay for the test



or tests notwithstanding other provisions of this section and irrespective of the result.]

- [(e) **Data.** Emission data secured as the result of this regulation or other provisions of law shall be correlated with applicable emission limitations or other control measures and shall be available for public inspection during regular business hours or by appointment during other hours at the offices of the department. Information other than emission data which relates to production, sales figures or processes of any owner or operator shall not be disclosed publicly upon finding by the director that to do so will result in a significant and adverse effect upon the competitive position of such owner or operator, except in or following public hearing or except as necessary to protect the public health, safety or well-being, unless such owner or operator shall expressly agree to their publication or availability to the general public.]

**3-12. Emergency provisions.**

- (a) Notwithstanding this Chapter or any other law, if the **Director** finds that a **person** is causing or contributing to **air pollution** and that the pollution creates an emergency that requires immediate action to protect the public health or safety, the **Director** must order the **person** to immediately reduce or stop the **air pollution**. That **person** must immediately comply with the **Director**'s order.
- (b) If the Governor or the Secretary of the Maryland Department of the Environment declares an **air pollution episode**, the **Director** may take any action authorized under State law to protect the public health or safety.

**[3-13. Circumvention and right of entry.]**

[(a) No person shall build, erect, install or use any article, machine, equipment or other contrivance, the sole purpose of which is to dilute or conceal an emission without resulting in a reduction in the total emission of air pollutants nor shall a person do any noncorrective thing nor commit any noncorrective act with the intent to distort test emission results.]

[(b) Any person who in any manner hinders, obstructs, delays, resists, prevents or in any manner interferes or attempts to interfere with the department or its representatives in the performance of any duty or shall refuse to permit the department or its representative to perform their duty by refusing them entrance at reasonable hours to any premises in which the provisions of the chapter are being violated or are suspected by the director of being violated or refuse to permit testing or permit the inspection or examination of such premises for the purpose of enforcement of the provisions of this chapter and regulations adopted thereto shall be subject to revocation by the director of all permits issued pursuant to this chapter to him and such other action as may be provided at law or by provisions of this Code.]

[(c) (1) For the purpose of developing or assisting in the development of any implementation plan, standard of performance, emission standard or the enforcement of any regulation contained herein, each supplier of residual and distillate fuel oil in the county is hereby required to file an annual report with the director, which report is due on July 1 of each year, listing all customers of that supplier and showing therewith the fuel types, grades and

quantities purchased or consumed by each customer thereof during the twelve (12) months immediately preceding.

- (2) The director is hereby authorized to waive the requirements of the foregoing subsection as to any supplier or suppliers upon written agreement by that supplier that it will, within ten (10) days of receipt of a written request by the director, furnish such information as set forth in the preceding section as he deems necessary. All information obtained under this or the preceding section shall be entitled to protection as trade secrets and the department shall keep such information confidential.]

### **3-13. Enforcement and Penalties.**

- (a) The **Director** may enter a non-residential site during normal business hours or at any other reasonable time to inspect, investigate, or monitor activities subject to this Chapter. If the **person** in charge of the site does not consent to an entry by the **Director**, the **Director** must obtain an administrative search warrant from a court by satisfying reasonable statutory or administrative standards for conducting an inspection.
- (b) The **Director** may, with the consent of the owner or occupant, enter a private dwelling at any reasonable time to inspect, investigate, or monitor activities subject to this Chapter. If the owner or occupant of the residence does not consent to an entry by the **Director**, the **Director** may obtain an administrative search warrant from a court by showing that reasonable legislative or administrative standards for conducting an area inspection have been satisfied.
- (c) A **person** must not hinder, prevent, or unreasonably refuse to permit a lawful inspection, investigation, or monitoring under this Chapter.

- (d) The **Director**, the Fire Administrator, or the Administrator's designee may issue a notice of violation, corrective order, stop-work order, or civil citation to any **person** who causes or allows a violation of this Chapter.
- (e) A **person** who causes or allows a violation of this Chapter must submit a **plan for compliance** if required under a notice of violation or corrective order. The **plan** **[[for compliance]]** must include a schedule to correct the violation. The **Director** must approve **[[any]]** or disapprove the **plan** **[[for compliance]]** and any amendment to an approved **plan**.
- (f) The **Director** may issue a stop-work order to any **person** who violates this Chapter in connection with an activity conducted under a building **permit** issued under Chapter 8 or a sediment control **permit** issued under Chapter 19.
- (g) Any violation of this Chapter is a Class A violation. Each day a violation continues is a separate offense.
- (h) In addition to any other remedy allowed by law, the **Department** may seek injunctive or other appropriate judicial relief to prevent or stop a violation of this Chapter.

**[3-14. Emergency provisions.]**

- [(a) Notwithstanding the provisions of this chapter or any other provision of law, if the director finds that any person is causing or contributing to air pollution and that such pollution creates an emergency which requires immediate action to protect the public health or safety, he shall order such person to reduce or discontinue immediately the air pollution and such order shall be complied with immediately.]

[(b) Whenever an air pollution episode is declared by the secretary of the state department of health and mental hygiene or the governor, the director shall have the authority to take such action as prescribed under state regulations governing the control of air pollution or as necessary to protect the public health or safety.]

### **3-14. Appeals.**

(a) A person aggrieved by an action taken or an order issued under this Chapter may seek reconsideration by filing a written request with the Director within 10 days after the action or order. The request must state the date and nature of the action or order, the remedy requested, and why the Director should grant the request. Within 10 days after receiving the request, the Director must:

(1) issue a written decision on the request for reconsideration if the Director finds no material facts in dispute; or

(2) notify the person in writing of any material facts in dispute and:

(A) establish a deadline of not more than 30 additional days for the Department to resolve the dispute and the Director to issue a written decision on the request for reconsideration;

or

(B) refer the matter to a hearing officer under Article I of Chapter 2A.

(b) A request for reconsideration does not stay the action or order unless the Director grants a stay. The Director's decision on a request for reconsideration is a final decision.

(c) A person aggrieved by a final decision of the Director under this Chapter may [[and]] appeal the action or order under [[the procedures in Article I of Chapter 2A. A request for reconsideration does not stay the

action or order unless the **Director** or other decision maker grants a stay.]] Section 2A-11.

**[3-15. Prima facie evidence of unlawful emissions.]**

[In any hearing of the district court for the county or any court of competent jurisdiction, the fact of operation without a valid permit, together with testimony as to ownership or responsibility from the records of the department shall be prima facie evidence of unlawful emissions and that the equipment for which the permit is not in effect is being operated in violation of the provisions of this chapter and regulations enacted pursuant thereto.]

**[3-16. Appeals.]**

[Any person aggrieved by an order issued under this Chapter may appeal within 10 days from such order to the County Board of Appeals under Section 2-112(a). Such appeal does not stay execution of the order more than 10 days, unless the Board of Appeals grants a stay upon application of the person filing the appeal.]

**[3-17. Violations, penalties and liabilities.]**

[Failure to comply with any provision of this chapter shall constitute a class A violation as set forth in section 1-19 of chapter 1 of the County Code.]

**Sec. 2. Transition.**

Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect.

**Sec. 3. Emergency Effective Date.**

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This Act takes effect on the date on which it becomes law.

763 *Approved:*

764 /S/ April 2, 2002

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Steven A. Silverman, President, County Council Date

765 *Approved:*

766 /S/ April 11, 2002

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Douglas M. Duncan, County Executive Date

767 *This is a correct copy of Council action.*

768 /S/ April 15, 2002

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Mary A. Edgar, CMC, Clerk of the Council Date